# Lim Kit Siang v Datuk Dr Ling Liong Sik & Ors

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO S3-23-75-1993
CONSOLIDATED WITH CIVIL SUIT NO S2-22-520-1993
ZAINUN ALI JC
7 NOVEMBER 1996

***Tort** — Defamation — Libel — Whether actual words must be pleaded — Whether words attributed to first defendant capable of bearing defamatory meaning — Whether plaintiff has sufficient cause of action*

The plaintiff, the leader of a political party, brought actions against the defendants. The first defendant was the leader of another political party while the second, third and fourth defendants were the editor, publisher and printer of a local daily newspaper respectively. The causes of action of both suits were based on a statement allegedly made by the first defendant in a speech which was later published by the second, third and fourth defendants. The alleged defamatory statements concerned funds collected by the plaintiff's political party for the payment of quit rent of Bukit China in Melaka. The first defendant raised the preliminary issues of whether the words set out in the statement of claim were capable of bearing the defamatory meaning as alleged by the plaintiff and whether the statement as published could be defamatory in effect. The issues raised by the second, third and fourth defendants were whether the words published in both reports, read in their ordinary and natural meaning, were capable of being defamatory and whether the plaintiff's allegations in his statement of claim disclosed a sufficient cause of action against them.

**Held**, striking out the plaintiff's application with costs:

(1) The alleged defamatory words as uttered must be reproduced in verbatim in the statement of claim and a certified translation must be tendered. To merely describe the substance, purpose or effect of the words was not sufficient. What was important was not the fact that the first defendant had used the defamatory expression but the fact of his having used those defamatory expressions as alleged. Since the alleged defamatory words as pleaded in the plaintiff's statement of claim (even if it captured the essence of what the first defendant said) was based on the newspaper report and therefore the product of the reporter's journalistic skills, the statement of claim did not disclose any cause of action against the first defendant (see pp 526D, H–I and 527D–E); *Bruce v Odhams Press Ltd* [1936] 1 KB 69, *Harris v Warre* (1879) 4 CPD 125, *Workers' Party v Tay Boon Too* [1975] 1 MLJ 47 and *Collins v Jones* [1955] 2 All ER 145 followed.

(2) With regard to the second, third and fourth defendants, from an objective point of view, the two reports read as a whole did not appear to be capable of bearing any defamatory meaning and thus the statement of claim did not disclose a sufficient cause of action against them (see p 529B–D).

**Per curiam:**

Even if there was a valid cause of action against the first defendant, the statement as reported fell short of being defamatory because there was no identification of the part of the statement which was alleged to be defamatory. Further, a statement is not defamatory merely because it caused damage to the plaintiff. It must either contain the defamatory allegation or the statement itself is false. The alleged statement considered in its natural and ordinary meaning was not capable of being defamatory as alleged and based upon the plaintiff's answers in the interrogatories, could not be said to be untrue. Thus in the light of this, the plaintiff's claim would also fail (see pp 527E, H–I and 528A–D); *Astaire v Campling & Anor* [1965] 3 All ER 666 followed.

**[Bahasa Malaysia summary**

Plaintif, yang mengetuai suatu parti politik, telah memulakan tindakan terhadap defendan-defendan. Defendan pertama merupakan ketua sebuah lagi parti politik yang lain manakala defendan kedua, ketiga dan keempat adalah penyunting, penerbit dan pencetak suatu suratkhabar harian tempatan masing-masing. Kausa tindakan kedua-dua guaman adalah berdasarkan kenyataan yang dikatakan dibuat oleh defendan pertama dalam ucapan yang kemudiannya diterbitkan oleh defendan-defendan kedua, ketiga dan keempat. Kenyataan fitnah yang dikatakan adalah berkaitan dengan wang yang dikutip oleh parti politik plaintif untuk bayaran cukai tanah Bukit China di Melaka. Defendan pertama membangkitkan isu permulaan tentang sama ada perkataan-perkataan yang dinyatakan dalam pernyataan tuntutan berupaya membawa maksud fitnah seperti yang dikatakan oleh plaintif dan sama ada pernyataan seperti yang diterbitkan boleh memfitnah. Isu-isu yang dibangkitkan oleh defendan kedua, ketiga dan keempat adalah sama ada perkataan-perkataan yang diterbit dalam kedua-dua laporan, yang dibaca dalam maksud biasa, boleh memfitnah dan sama ada pengataan plaintif dalam pernyataan tuntutan mendedahkan kausa tindakan yang memadai terhadap mereka.

**Diputuskan,** membatalkan permohonan plaintif dengan kos:

(1) Perkataan-perkataan fitnah yang dikatakan mestilah dihasilkan semula kata demi kata dalam pernyataan tuntutan dan satu terjemahan yang diakui sah mestilah dikemukakan. Hanya menggambarkan isi, tujuan atau kesan perkataan-perkataan tidak mencukupi. Apa yang penting bukanlah fakta bahawa defendan pertama telah menggunakan ungkapan fitnah tetapi fakta tentang penggunaan ungkapan fitnah olehnya seperti yang dikatakan. Oleh kerana perkataan fitnah yang dikatakan seperti yang diplidkan dalam pernyataan tuntutan plaintif (jika pun ia mengabadikan intipati apa yang dikatakan oleh defendan pertama) adalah berdasarkan laporan suratkhabar dan maka itu hasil

kemahiran kewartawanan pemberita, pernyataan tuntutan tidak mendedahkan sebarang kausa tindakan terhadap defendan pertama (lihat ms 526D, H–I dan 527D–E); *Bruce v Odhams Press Ltd* [1936] 1 KB 69, *Harris v Warre* (1879) 4 CPD 125, *Workers' Party v Tay Boon Too* [1975] 1 MLJ 47 dan *Collins v Jones* [1955] 2 All ER 145 diikut.

(2) Berkenaan dengan defendan kedua, ketiga dan keempat, dari suatu pandangan objektif, kedua-dua laporan dibaca secara keseluruhan tidak kelihatan berupaya membawa apa-apa maksud fitnah dan justeru itu pernyataan tuntutan tidak mendedahkan suatu kausa tindakan yang mencukupi terhadap mereka (lihat ms 529B–D).

**Per curiam:**

Jika pun terdapat suatu kausa tindakan yang sah terhadap defendan pertama, pernyataan seperti yang dilaporkan tidak memfitnah kerana tiada pengenalpastian atas bahagian kenyataan yang dikatakan memfitnah. Selanjutnya, suatu kenyataan tidak memfitnah hanya kerana ia menyebabkan kerosakan kepada plaintif. Ia mestilah mengandungi pengataan fitnah atau kenyataan sendiri adalah palsu. Kenyataan yang dikatakan apabila dipertimbangkan dalam makna biasa tidak berupaya memfitnah seperti yang dikatakan dan berdasarkan jawapan plaintif dalam interogatori, tidak boleh dikatakan adalah tidak benar. Maka memandangkan keadaan ini, tuntutan plaintif juga akan gagal (lihat ms 527E, H–I dan 528A–D); *Astaire v Campling & Anor* [1965] 3 All ER 666 diikut.]

**Notes**

For cases on libel, see 12 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 165 –230.

**Cases referred to**

*Astaire v Campling & Anor* [1965] 3 All ER 666 (folld)
*Bruce v Odhams Press Ltd* [1936] 1 KB 697 (folld)
*Collins v Jones* [1955] 2 All ER 145 (folld)
*Dr Jenni Ibrahim v S Pakianathan* [1986] 2 MLJ 154 (refd)
*Harris v Warre* (1879) 4 CPD 125 (folld)
*The Straits Times Press (1975) Ltd v Workers' Party & Anor* [1987] 1 MLJ 186 (refd)
*Workers' Party v Tay Boon Too* [1975] 1 MLJ 47 (folld)

*Karpal Singh* (*Karpal Singh & Co*) for the plaintiff.
*RR Sethu* (*RR Sethu & Co*) for the first defendant.
*Bhag Singh* (*Bhag Sulaiman & Co*) for the second, third and fourth defendants.

**Zainun Ali JC**: In the preliminary issue before this court, two suits ie Civil Suit Nos S3–23–75–93 and S2–22–520–93 have been consolidated.

The claim in both suits is based on the alleged cause of action said to be founded on a *speech* by the first defendant on 12 August 1993 and on a *publication* in the *Star* newspaper on 14 August 1993. A

The cause of action in Civil Suit No S2–22–520–93 is founded on publication in the issue of the *Star* newspaper dated 13 August 1993.

Focusing on the first preliminary issue raised by the first defendant, the question before this court is whether the words attributed to the first defendant and published by the second, third and fourth defendants as set out in the statement of claim, read in the light of the plaintiff's answers to the interrogatories or even otherwise, are capable of bearing the defamatory meaning as alleged in the plaintiff's statement of claim. B C

I have had the advantage of having heard counsel and reading the authorities cited in connection therewith.

The authorities are manifest in their approach that it is fundamental that the exact words as uttered (by the first defendant in this case) must be reproduced in the original language with a certified translation in the language of the court, in the absence of which the claim will fail. D

The statement of claim appears to be bereft of certain basic requirements. Paragraph 7 (p 10 of the bundle of pleadings) alleges that the first defendant spoke at an anniversary dinner. What the first defendant said was subsequently converted into print. The quoted words of the report (not the actual speech of the first defendant) refer to what was allegedly said later. In short, the main part of para 7 bears no connection with what follows in the quotation. E

The case of *Bruce v Odhams Press Ltd* [1936] 1 KB 697 is succinct on the rule that pleadings of this nature must be clear and the particulars must bear out what is alleged in the main allegation which is the material allegation. F

It behoves me to echo the principles as laid down in authorities such as *Harris v Warre* (1879) 4 CPD 125 and *Workers' Party v Tay Boon Too* [1975] 1 MLJ 47 that the importance of the actual words uttered in the pleadings has always been a recurrent reminder, since in a libel, the words used are the material facts and must therefore be set out in the statement of claim. It is not good to merely describe their substance, purpose or effect. The law requires the very words in the libel to be set out in the declaration in order that the court may judge whether they constitute a ground of action. G

Thus in the circumstances of this present application I would be hard put to judge whether the words (as found in the statement of claim attributed to the first defendant) constitute a ground of action — since those words in the report and pleaded in the statement of claim are reported in the third person and are but the product of a journalist's creative skills and reporting only, even if it captures the essence of what the first defendant uttered. This is not *sufficient* since what is important is not the fact of the first defendant having used defamatory expression but the fact of his having used *those* defamatory expressions alleged, which is the fact on which the case depends. H I

A In the light of the authorities such as *Haris v Warre* and *Collins v Jones* [1955] 2 All ER 145, it is necessary for the plaintiff to plead or allege verbatim the exact words which he complains of.

Secondly, it is appropriate at this stage to see whether the allegation that no proper accounts were kept and those collecting funds for public B purpose should keep proper accounts and refund money collected when not needed is defamatory in their ordinary and natural meanings.

I am satisfied after having read the authorities such as *Workers' Party v Tay Boon Too, The Straits Times Press (1975) Ltd v Workers' Party & Anor* [1987] 1 MLJ 186 and *Dr Jenni Ibrahim v S Pakianathan* [1986] 2 MLJ 154 that there appears to be no connotation of criminality and no suggestion C of misappropriation of funds. Thus in the context in which it appears, I would take the view that the newspaper's report is innocuous in substance.

In this connection, the plaintiff cannot be heard to say that the substance will be pleaded *and* the actual words can be proved in evidence since no evidence of the actual words used can be led *unless* the pleading D contains the very words sought to be proved as having been uttered.

Thus on the first preliminary issue raised, I find that the plaintiff's statement of claim does not disclose any cause of action and on this ground alone the claim must fail.

In the circumstances, it would be purely academic for me to decide E on the second preliminary issue raised but suffice it to state here that the statement in the *Star* newspaper alleged to be defamatory falls short of being so since there is no identification of the part which is alleged to be defamatory.

It is usual in cases of this nature to point out the offending passage by highlighting or underlining them.

F It would be pertinent also to state that it is undisputed that the first defendant and the plaintiff are politicians and leaders of two political parties and so the issue over the levy of quit rent on Bukit China in Malacca merely underscores the public interest this case has generated.

The issue is over the funds collected by the plaintiff's political party G for the payment of quit rent, the amount collected and the accounts of that fund. This was relevant as the quit rent issue had been brought up with the State Government and the indication was that there was no further need for any of these funds. So in relation to this, the answers to the interrogatories are immediately relevant. Since the admissibility of the interrogatories have been dealt with, I shall not dwell on them.

H Even if the statement appears damaging, the test in *Astaire v Campling & Anor* [1965] 3 All ER 666 is clear that not every statement is defamatory just *because* it caused damage. In fact, the statement itself must contain the defamatory allegation or that the statement is *false*.

However, in the face of the plaintiff's answers in the interrogatories I could it be said the words in the report are not true?

Over and above the publication, the onus is on the plaintiff to establish that the meanings relied upon by him were conveyed by the publication and that these meanings were defamatory of the plaintiff.

In this connection, the natural and ordinary meaning must be considered objectively without reference to evidence or what the plaintiff understood them to mean.

In this case, merely to call someone dishonest, a liar or a cheat is insufficient. These words do not entail corporal punishment. In the present case no such words are even alleged to have been uttered by the first defendant. What the words bear out against the first defendant is perhaps slander as opposed to libel and in order to make it actionable there must be pleaded special damages and not general damages.

What the statement alleged to have been uttered by the first defendant states merely that the plaintiff is not forthcoming with regard to the funds. This statement does not impute or suggest a criminal offence which attracts corporal punishment.

In this connection, I might add that politicians and public figures as such, should not suffer from the malady of fragile sensibilities, especially if matters such as accountability and transparency are called into question. Thus on the second preliminary issue, the plaintiff's claim also fails.

With regard to the second, third and fourth defendants, the issue is whether the words published in their ordinary and natural meaning are capable of conveying a defamatory meaning and whether the averments in the plaintiff's statement of claim constitute or disclose a sufficient cause of action against the second, third and fourth defendants in the two civil suits.

The imputation arising from the two reports is that:

(1) the plaintiff was dishonest;

(2) guilty of criminal misappropriation; and

(3) he is not a person of integrity.

The question whether the words published are capable of bearing a defamatory meaning naturally turns on the related issue as found in the interrogatories and answers thereto and the report as a whole.

The thrust of the newspaper report is to make the party and not the individual answerable. The plaintiff being the Secretary-General of the Party was naturally named to account for this. What was required is disclosure of the actual amount collected.

This brings us to the next question of whether the general readers reading the newspaper report would view it as being defamatory. Thus the question is what is the test to be applied here. It would be — in the words of Gatly — whether, under the circumstances in which the writing was published, reasonable men to whom the publication was made would be likely to understand it in a libellous sense.

The mere fact that the readers understood the language in a defamatory sense does not make it defamatory unless they were reasonably justified in so understanding it.

I would agree that this has to be viewed in the context of the surrounding circumstances.

A And in the light of this, the defendants are entitled to have read as part of the plaintiff's case the *whole* of this publication from which an alleged libel is extracted so that there could be found, if any, some passages which may somewhat water down the sting of defamation.

I am of the view that on the basis of the two reports as they stand in B its entirety, there is no imputation of criminality. Any interpretation going beyond what is understood would go into the sphere of conjecture. Thus the two reports do not appear to be capable of bearing any defamatory meaning or understood by ordinary people to be so construed as having improper imputations against the plaintiff or his political party.

Thus the plaintiff's claim with regard to the second, third and fourth C defendants must fail since the words published in their ordinary and natural meaning are incapable of conveying a defamatory meaning and thus the plaintiff's statement of claim against them do not constitute or disclose a sufficient cause of action.

In the circumstances, therefore I order that the whole of the plaintiff's D application in the two suits be struck out with costs.

*Application struck out with costs.*

Reported by Lim Kuan Yew

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